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UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

RSPPA-98-4868-19

In re Gas Gathering Line : Docket No. PS-122,
Definition : Notice 1.

INITIAL COMMENTS OF THE OHIO OIL AND GAS ASSOCIATION

Pursuant to the Notice of Proposed Rulemaking ("NOPR") issued Wednesday, September 25, 1991 by the Department of Transportation, Research and Special Programs Administration ("RSPA"), the Ohio Oil and Gas Association respectfully submits initial comments on the proposed change to the Gas Gathering Line Definition.

I. DESCRIPTION OF THE OHIO OIL AND GAS ASSOCIATION

The Ohio Oil and Gas Association ("OOGA") is a trade association comprised of oil and natural gas producers, natural gas pipeline companies, natural gas marketers, and other businesses providing services, goods, and equipment to the oil and natural gas industry in the State of Ohio. The fundamental purpose of OOGA is to protect, promote, foster and advance the common interests of those engaged in all aspects of the Ohio oil and natural gas industry. The OOGA's membership totals approximately 1400 members, the majority of which are small business entities,

II. SUMMARY OF OOGA'S COMMENTS.

OOGA submits that the existing definition of "gathering line" has proven, over the past twenty-one years, to be very workable and not subject to ambiguity in everyday application. A few disputes concerning the application of the rules to particular gathering systems are not sufficient basis to adopt a new regulatory approach. OOGA believes that RSPA has not **undertaken** a required reasoned analysis before proposing a change to the existing rule. The proposed rule will not result in any increase in safety of natural gas pipelines, the fundamental purpose of the Natural Gas Pipeline Safety Act of 1968 and regulations adopted under it. OOGA therefore urges RSPA to **withdraw** its proposed rule or significantly modify it to accommodate the interests of Ohio producers.

III. THE LEGISLATIVE HISTORY OF THE NATURAL GAS PIPELINE SAFETY ACT OF 1968.

In 1968, Congress passed the Natural Gas Pipeline Safety Act (the "**Act**"). The purpose of the Act, as reported by Congress, is -

to provide for the prescription and enforcement of minimum Federal safety standards for the transportation of natural and other gases by pipeline and for pipeline facilities.

H.R. Rep. No. 1390, 90th Cong., **2d** Sess., reprinted in 1968 U.S. Code **Cong. & Admin. News** 3223 (1968). During debate, Congress perceived a need for legislation due to the rapid growth of the

natural gas industry, particularly since the end of World War II. As stated in 1968, the Congress found that

In 1945 there existed some 27,000 miles of gathering lines. This has more than doubled.

In 1945 there existed some 77,000 miles of transmission lines. This has more than tripled.

In 1945 there existed some 113,000 miles of natural gas distribution lines. This is now nearly five times greater.

Id. at 3225. This well documented growth, combined with the fear of an aging natural gas gathering, transportation, and distribution network compelled Congress to adopt these minimum **safety** standards even though the safety record of the natural gas industry was, at that time, a "relatively good one." Id.

With respect to gathering lines, the Senate initially refrained from including them within the jurisdiction of the Act, particularly since the safety record of gathering lines was unblemished. Eventually the Senate determined that certain gathering lines, in populated areas, presented some increased levels of risk. As Congress stated,

[t]here is no question that there exist certain gathering lines which are located in populous areas but the tremendous bulk of such lines is located in rural areas. Testimony was offered as to the safety record of these lines and that no man-days had been lost as the result of accidents on gathering lines during the past 6 years. The safety record is impressive.

Id. at 3234. With these safety records obviously in mind, however remaining mindful of the safety of those citizens living nearby, Congress eventually included within the jurisdiction of the Act those gathering lines located within populated areas and

excluded those lines located in rural areas. To accomplish **this**, Congress excluded from the jurisdictional definition of **"transportation of gas"** certain rural gathering lines:

"Transportation of **gas**" means the gathering, transmission or distribution of gas by pipeline or its storage in interstate or foreign commerce: except **that it** shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary may define as a nonrural **area**[.]

49 U.S.C. § 1671(3).

Pursuant to Congressional direction, in 1970 the Department of Transportation adopted and implemented the regulatory program for natural gas pipeline safety. See 49 C.F.R. Part 192. This regulatory program has now operated at an exceptional level for over twenty-one years, of course with amendments to the regulations and the Act along the way. However, the definition of "gathering line" has remained constant over those twenty-one years even though changes have been proposed. RSPA now seeks to discard twenty-one years of regulation and administrative interpretation of the term, and in its place impose a definition of "gathering **line**" that will dramatically re-classify hundreds of thousands of miles of gathering lines across the nation to transmission or distribution lines without a finding that such is necessary for the purpose of safety.

IV. FOCUS ON THE "FUNCTION" OF THE PIPELINE IS NOT CONSISTENT WITH THE CONGRESSIONAL INTENT UNDERLYING THE ACT.

RSPA's proposed definition of "gathering line" relies upon the "function" of the pipeline rather than the "safety" of the pipeline. This focus is contrary to the Congressional intent behind the Act as described above. Rather than attempt to define where a gathering line ends and a transmission or distribution line **begins** based upon the function the pipeline is serving, RSPA should concern itself with the physical characteristics giving rise to safety concerns of the pipeline. For example, RSPA proposes that where there is no natural gas processing plant, the point where custody of the gas is transferred should be the point at which the gathering line ends and the transmission or distribution line begins. Although there will be some cases where the custody transfer point will also present increased safety risks, OOGA believes that this will not be a universal point of concern for purposes of the Act. Rather, RSPA should be concerned with the point at which the physical characteristics of the pipeline change to the degree that causes increased levels of risk necessitating safety regulation. A change in custody alone does **not** increase the threat to safety.

Furthermore, RSPA proposes that where there is no processing plant or custody transfer point, the gathering line will end and transmission or distribution line will begin at the last point downstream where gas is produced in the same production field or where two adjacent production fields are commingled. Once again, OOGA cannot understand how this

"arbitrary point" impacts pipeline safety. In general, there will be no physical difference between RSPA's mythical conversion point and the point one, ten, or one hundred feet downstream. Rather than this "last point" approach, OOGA submits that the transmission or distribution line should begin at the point where the physical characteristics of the pipeline change to a degree requiring the implementation of safety regulations.

OOGA submits that there are several physical characteristics that trigger safety regulation under the Act. Examples might be maximum allowable-operating pressure (greater than 250 psig), pipeline diameter (greater than 9 1/2 inches), hoop stress (greater than 20 per cent of SMYS), or downstream of a compressor other than a production compressor. Whatever the physical change, OOGA believes that the current definition is, and has been, sufficient to adequately address safety concerns at the proper points where gathering lines become transmission or distribution lines. Furthermore, RSPA must also consider that the gathering lines at issue are located only in rural areas.

Finally, OOGA believes that RSPA wrongly examines the Federal Energy Regulatory Commission's (FERC's) "primary function" test and the Ventral-point" test. 56 Fed. Reg. 48508. The FERC analyzes pipelines to determine whether they are gathering lines for an entirely different purpose than RSPA. The FERC's tests and ultimate conclusions are not based at all on safety. RSPA's focus must be on safety. To analogize to the

FERC's tests and to actually adopt, as a basis for its own rule, the "**central-point**" test is both unreasonable and unlawful.

V. RSPA'S PROPOSAL TO REDEFINE "GATHERING LINE" IS NOT BASED UPON REASONED ANALYSIS.

It is well established under administrative law principles that "**an** agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored? Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971). See also Motor Vehicles Mfr.'s Assoc. v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29 (1983) (when agency changes course it must "**supply** a reasoned analysis for the change beyond that which may be **required** when an agency does not act in the first instance.") In short, OOGA does not believe that RSPA has undertaken a "reasoned analysis" prior to proposing a new definition of "gathering line." Therefore, OOGA submits that RSPA has no basis to impose the proposed change and should retain the status quo of the current, workable definition.

A. RSPA Has Not Undertaken a Reasoned Analysis of "the Problem."

RSPA now seeks to overturn twenty-one years of regulation and interpretation on the basis that "**operators** and pipeline safety enforcement personnel have had difficulty distinguishing a gathering line from a transmission or distribution line." 56 Fed. Reg. 48,506 (Sept. 25, 1991). To

arrive at such a conclusion, it would seem that an administrative agency would have undertaken a study, survey, investigation, or some other type of reasoned analysis that indicates that, for safety reasons or otherwise, there is a need for such a change. No **such** reasoned analysis is described in the NOPR. OOGA can only conclude that no such reasoned analysis has been performed.

Furthermore, OOGA, an association of over 1400 members, is not aware of any of its members having any such ****problem.**** Nor is it aware of any pipeline enforcement personnel having difficulty. And, finally, OOGA is not aware of any safety reasons necessitating the agency's change.

B. RSPA's Conclusion that Most Gathering Lines Have Processing Plants is Questionable.

A substantial portion of the NOPR focuses on processing plants. RSPA concludes that "[w]hile most gathering lines have processing plants, there is a small percentage of gathering lines that do not have such plants." 56 Fed. Reg. 48508. OOGA is extremely concerned with such conclusions without supporting data. At minimum, RSPA should state how many gathering lines have processing plants, or at least state the percentage.

The Ohio Division of Oil and Gas has estimated that there are 65,000 oil and gas wells located in **Ohio**.¹ With so many wells, most of which produce natural gas, RSPA would probably be surprised to learn that there are very few natural

¹Natural gas and oil production in Ohio from those 65,000 wells totaled 154,618,630 MCF and 10,008,263 BBLs in 1990. 1990 Ohio Oil and Gas Developments - "The DeBrosse Report", Ohio Division of Oil and Gas (March 20, 1991).

gas processing plants in Ohio. While Ohio does not speak for the nation, it obviously has a significant number of oil and gas wells and associated gathering lines that do not have processing plants but will be impacted by RSPA's proposed change.

c. RSPA's Impact Assessment Appears Questionable.

1. RSPA's Conclusion that "Very Few" Gatherins Lines Will Be Re-Classified is Questionable.

RSPA concludes that ****there would be very few**" gathering lines re-classified as transmission or distribution lines under the new definition. 56 Fed. Reg. 48,509. OOGA does not agree with this conclusion. If the **"re-classification point"** becomes the point of custody transfer², thousands of miles of Ohio gathering lines will become transmission or distribution lines. For example, in Ohio very few operators have the advantage of large, contiguous blocks of land for oil and gas development. As a result, numerous operators are found within a producing field or area. Rather than have each operator construct its own gathering system in each area, normally a single operator constructs a gathering system which connects downstream to a transmission or distribution line of a regulated interstate pipeline of local distribution companies. Other operators in the area may sell their gas to the operator to gather the gas for

²RPSA has failed to define the term **"the point where custody of the gas is transferred"** as used in its proposed definition of ****gathering line.**** Nor has RSPA defined the term ****distribution center.**** OOGA believes that both terms are subject to numerous and conflicting interpretations. RPSA's failure to adequately define these terms is evidence, again, of its failure to undertake a ****reasoned analysis.****

delivery to a transmission or distribution line. Under the definition proposed, the point of custody transfer where the operator connects his well to the other **operator's gathering** system could become the re-classification point. This **could** result in the conversion of thousands of miles of gathering lines to transmission or distribution lines.

Furthermore, in many areas in Ohio, federal or state regulated gas companies have constructed similar gathering facilities. Thousands of miles of these gathering lines could become transmission or distribution lines under the proposed definition. At a minimum, **RSPA's** proposed definition leaves thousands of miles of pipelines in Ohio in question. To conclude that **"very few"** gathering lines will be reclassified is very doubtful,

2. **RSPA's Determination that Re-Classified Pipelines Will Only Be Subject to Operating and Maintenance Requirements in 40 C.F.R. Part 192 is Questionable.**

RSPA also concludes that if any pipelines are re-classified as transmission pipelines, those lines would only be subject to the operating and maintenance requirements. 56 Fed. Reg. 48,509. OOGA is concerned that 49 C.F.R. § 192.14 will require testing and cathodic protection, both of which go well beyond operation and maintenance requirements. While OOGA is not able to undertake a survey of its membership due to the immediacy of comments on this NOPR, we, nonetheless, believe that compliance with these requirements could easily run into the tens of millions of dollars, or more, for our membership. These lines

are low pressure, low volume gathering lines with an excellent safety record. Conversion to compliance under the proposed regulation would serve no legitimate safety purpose for these lines. Thus, OOGA believes that a more detailed analysis is warranted.

3. RSPA's Conclusion that the Proposed Definition Will Not Result in an Impact of \$100 Million or More is Questionable.

RSPA concludes that the annual effect upon the economy will not exceed \$100 million is likewise questionable. 56 Fed. Reg. 48,509. As stated above, OOGA believes that the impact of re-classification upon just the Ohio natural gas industry could run into the tens of millions of dollars or more. The annual costs of operation and maintenance must also be considered. Finally, imposition of this new definition will most likely **result in** the premature abandonment of oil and natural gas wells caused by the inability of marginal economic gathering lines to support expensive conversion costs. Such abandonment will not only result in the loss of revenue to the operator, but will also result in a reduction in oil and natural gas reserves for the nation. In short, OOGA does not believe that RSPA has adequately reviewed the costs it will cause to the industry from this change in regulatory definition.

4. RSPA's Conclusion of No Significant Impact Upon a Substantial Number of Small Entities is Incorrect.

RSPA also concludes that the proposed rule will have no significant impact upon a substantial number of small entities. 56 Fed. Reg. 48,509. OOGA submits that many of its members are

****small entities"** and that a majority of its membership will be significantly impacted by the proposed rule. RSPA, in **OOGA's** opinion, has not adequately addressed this issue.

Furthermore, as stated above, the adoption of **this new** definition will result in the premature abandonment of **many oil** and natural gas wells in Ohio. Compliance costs will be directly incurred by oil and gas operators. Ohio's oil and gas operators have no manner in which to offset or recoup the costs of compliance required by this new definition.

VI. **RSPA HAS NOT UNDERTAKEN CONSIDERATION OF SECTION 1672(A) FACTORS.**

In section 1672 of the Act, Congress requires RSPA to consider certain factors when prescribing minimum safety standards for pipelines. OOGA believes that **RSPA's** proposed definition will bring thousands of miles of Ohio gathering lines within the jurisdiction of the Act. This will require the implementation of prescribed standards to these lines. Therefore, RSPA should have undertaken a review of the section 1672 factors prior to proposing the rule.

In prescribing these standards, section 1672 requires RSPA to consider -

- (1) relevant available pipeline safety data:
- (2) whether such standards are appropriate for the particular type of pipeline transportation or facility:
- (3) the reasonableness of any proposed standards: and
- (4) the extent to which such standards will contribute to public safety.

49 U.S.C. § 1672(a). Had RSPA considered such factors, it could have found that bringing additional rural gathering lines within the jurisdiction of the Act without support from relevant safety data and the result will be to subject such lines to inappropriate and unreasonable standards. Just as important, RSPA would have found that this new definition will not contribute to public safety.

VII. ALTERNATE PROPOSED RULE

In the event a rule is adopted, notwithstanding **what we** have described in the foregoing comments, the RSPA can avoid much of the economic dislocation caused by the proposed rule with some modifications. The rule should limit the breadth of its application to avoid putting out of business private rural gathering lines that are low volume, low pressure **systems** with little safety risk. A more appropriate definition would provide as follows:

Any line shall be deemed a gathering line up to the point of the **line's** interconnect with a) the transmission facilities of a pipeline fully regulated by FERC or b) the distribution facilities of a local distribution company fully regulated by a state public service/utilities commission. In addition, a line of less than 9 1/2" in diameter shall be deemed a gathering line.

This revised definition will avoid subjecting the **low** volume, low pressure private gathering systems to the unnecessary costs of compliance with safety standards that are designed to regulate urban, high pressure gas systems. Any other result will

cause the unnecessary **abandonment of** many small privately owned gathering systems that **will lead to** the premature plugging of many stripper gas and combination wells.

The proposed RSPA rule should not devastate one producing region of the country just because it was designed **to deal with** the structure of gathering lines in the Southwest producing areas where processing plants are common. Either the proposed rule should be rejected or clarifications need to be adopted to avoid harm to the Appalachian Basin producers located throughout Ohio.

VIII. CONCLUSION


In summary, OOGA requests that RSPA withdraw its proposal to adopt a new definition of ****gathering line.**** The proposal will have a serious impact upon the Ohio natural gas industry with no corresponding increase in safety. If the RSPA does not withdraw its proposed rule, it should adopt the alternative definition of **"gathering line"** proposed by OOGA herein.

Respectfully submitted,

OHIO OIL AND GAS ASSOCIATION

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